

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 17,425
)
Appeal of)

INTRODUCTION

The petitioner appeals a decision of the Office of Child Support (OCS) that it is not "liable" to petitioner for child support allegedly lost to the petitioner due to delay by OCS in filing her case with the Family Court. OCS has moved to dismiss for lack of jurisdiction.

FINDINGS OF FACT

1. The parties do not dispute the essential facts involved in the process of this appeal. In 1994 the Vermont Family Court issued an order, with the consent of the petitioner, that the father of the petitioner's child pay nothing in child support. In August 1998 the petitioner requested that OCS file an action in South Carolina, where the father had moved, to require the father to begin paying child support.

2. OCS admits there was a delay until January 2000 in its filing of this action after the petitioner requested it.

3. After the South Carolina court declined to hear the case, in late February 2001 OCS transferred the action to Family Court in Vermont. In June 2001 the Family Court issued an order requiring the father to pay \$188.29 a month in child support effective with the date that the action was filed in Vermont. The Court did not require the father to pay any additional amount for any period of time before March 2001.

4. The father has not paid as required by the June 2001 order. Sometime after the order was issued the petitioner filed an administrative complaint with OCS seeking compensation for the months in which OCS allegedly delayed in filing an effective action against the father. OCS issued a decision dated October 8, 2001 denying the petitioner's request. On November 13, 2001 the petitioner appealed this decision to the Human Services Board.

5. A telephone hearing was held on December 7, 2001, at which time the parties agreed to continue the matter for 90 days to allow OCS to determine whether it would file a request to modify the Family Court's June 2001 order to include payments for the period prior to March 2001 and to enforce the father's compliance with the June 2001 order.

6. On March 1, 2002 the parties informed the hearing officer that in January 2002 OCS had filed in Family Court a

motion to enforce the June 2001 order, which had not yet been heard. OCS represented that it would request the Family Court to include a modification requiring the father to pay an additional amount of support for the period prior to March 2001.

7. The petitioner admits that the Human Services Board does not have jurisdiction to order the absent father to pay any amount of child support or arrearages. The petitioner also admits that OCS is presently taking appropriate action to pursue her claims before the Family Court. However, in the event that the Family Court does not order the father to make any payments for the period prior to March 2001 (a result that OCS concedes is likely) the petitioner seeks an order from the Board that OCS is "liable" to her for this amount due to its delay prior to March 2001 in filing her request for support before an appropriate forum.

ORDER

The petitioner's appeal is dismissed for lack of subject matter jurisdiction.

REASONS

The Board has repeatedly held that it does not have jurisdiction to award any form of monetary damages against OCS, or any other administrative agency. See, e.g., Fair Hearing Nos. 16,070 and 16,043. This position has been upheld by at least two Vermont Supreme Court rulings (one affirming a ruling by the Human Services Board) holding that "an administrative agency may not adjudicate private damages claims". Scherer v. DSW, Id., and In re Buttolph, 147 Vt. 641 (1987). These rulings were, in turn, based on an axiomatic tenet of administrative law--that administrative agencies obtain "only such adjudicatory jurisdiction as conferred on them by statute, with nothing presumed in favor of their jurisdiction". See Gloss v. Delaware and Hudson, 135 Vt. 419, 422 (1977). Thus, even if it could be found that OCS was negligent or deliberate in its delay in filing the petitioner's claim¹ the Board would have no jurisdictional basis to find that agency "liable" for any monetary damages.

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¹ Such a finding neither need be nor is made in this matter.